M. NATANASABAPATHY

v.

UNITED ASIAN BANK BHD.

HIGH COURT, KUALA LUMPUR
DATO' HJ. ABU MANSOR BIN ALI J.
[ORIGINATING MOTION NO. R1-25-20
Of 1991]
26 DECEMBER 1992

INDUSTRIAL LAW: Applicant summarily dismissed by respondent - Respondent alleging applicant was negligent or grossly negligent - Industrial Court finding that applicant was not negligent or grossly negligent - Industrial Court awarding applicant compensation in lieu of reinstatement - Compensation awarded reduced on the grounds of contributory conduct by the applicant - Applicant's application to set aside offending portion of Industrial Court award - Whether there were grounds for holding that applicant's award of compensation should be reduced - Whether Industrial Court acted beyond jurisdiction - Whether High Court entitled to interfere.

The applicant was summarily dismissed by the respondent on the grounds of negligence or gross negligence. The applicant applied to the Industrial Court for reinstatement on the grounds that his dismissal was without just cause or excuse. The Industrial Court found as a fact that the applicant was not negligent or grossly negligent and awarded the applicant compensation in lieu of reinstatement. The Industrial Court then went further and reduced the damages awarded to the applicant by 40% holding the applicant liable for contributory conduct.

The applicant applied to the High Court for an order of *certiorari* to set aside the order reducing the compensation awarded to the applicant and for an order of *mandamus* for the case to be remitted back to the Industrial Court for consequential orders on remedies for the claimant.

Held:

[1] The primary finding of the learned Industrial Court Chairman was that the dismissal of the applicant was without just cause or excuse. As the Industrial Court had held that the applicant had not been negligent or grossly negligent as alleged it was unjustified for the Industrial Court to go on further and hold that even if the applicant had been negligent it was not gross and it was not one which would justify or warrant his dismissal.

[2] While it is within the Industrial Courts' discretion to award whatever quantum, if the sum awarded is to be reduced than it must be based on facts found. In the circumstances, the learned Chairman's reduction of the award by 40% was an error as it could not be supported by any facts.

[Applicant's application allowed with costs].

Case referred to:

V. Subramaniam & Ors. v. Craigielea Estate [1982] 1 MLJ 317 ***(cit)***

Malayan Banking Bhd. v. Association of Bank Officers, Peninsular Malaysia & Anor. [1988] 1 CLJ 276 / [1988] 3 MLJ 204 ***(cit)***

Legislation referred to:

Industrial Relations Act 1967, s. 30(6)

For the applicant - B. Lobo; M/s. Lobo & Associates
For the respondent - P. Jayasingam; M/s. Shearn Delamore & Co.

JUDGMENT

Hj. Abu Mansor bin Ali J:

The respondent hereby appeals against the decision of this Court on 12 August 1992 allowing applicant's application as prayed in enclosure (6). In enclosure (6) the applicant prayed for:

(1) Suatu perintah *certiorari* untuk dikemukakan dan membatalkan sebahagian dari keputusan Mahkamah Perusahaan No. 4 tahun 1991 yang bertarikh 8 Januari 1991 yang menyatakan bahawa berasaskan atas kesalahan dan keseluruhan kelalaian dalam tugasnya pembayaran kompensasi kepada pemohon haruslah dikurangkan.

(2) Dan memberi suatu perintah *mandamus* kepada Mahkamah Perusahaan bahawa kes Mahkamah Perusahaan No. 4/4-444/87 dan keputusan Mahkamah Perusahaan No. 4 tahun 1991 diserahkan kembali kepada Mahkamah Perusahaan untuk menggantikan dan pembetulan akan kepentingan perintah untuk pemohon. (IC case No. 4/4-444/87 and Award No. 4 of 1991 be remitted back to the Industrial Court for consequential orders on remedies for the claimant).

(3) Dan kos permohonan ini hendaklah menjadi kos dalam perkara ini.

In prayer (1) the applicant prays that an offending portion of the said Industrial Court's award

be set aside. The applicant says that the Industrial Court had made a perverse decision based on its own primary finding, in particular while holding in (a) that the applicant is completely blameless, in the allegation of negligence or gross negligence, at the same time the Industrial Court made an award that the compensation awarded to the applicant should be reduced due to the contributory conduct of the applicant.

After having heard argument I found there is merit in the applicant's argument and I allowed the applicant's application in prayers (1) and (2) of the said enclosure with costs.

In the applicant's statement of case (MN-1) attached to the affidavit of the applicant/claimant (enclosure (1)) he sets out his claim. In para 2 thereof he sets out that the dispute is over his dismissal from the services of the company as its Assistant Manager at a salary of RM2,640 per month with a housing allowance of RM600 per month and a car allowance of RM150 per month.

Then in paragraph 3 he said by letter dated 19 May 1987, the company summarily dismissed the applicant from its services with effect from 19 May 1987.

In paragraph 4 the applicant contends and would contend that the said dismissal was without any just cause or excuse. Alternatively the applicant alleged there is breach of natural justice. The claimant prayed for reinstatement.

In the reply of the company "MN-2" in particular paragraph 3.2.7 the company said Mr. Singaram collected the four bank drafts and subsequently left for India.

In paragraph 3.3 of "MN-2" the company's allegation against the applicant was that the investigations by the company into the loss revealed that the claimant had been grossly negligent in approving the early upliftment of the two fixed deposits, inspite of the alterations on the fixed deposit receipts and approving the conversion of the amount in the fixed deposits into bank drafts.

In paragraph 3.4 thereof by a letter dated 20 November 1986 the claimant was given a notice to attend and to answer charges as per said letter "UAB-1".

In paragraph 3 of the letter "UAB-1" the company alleged against the claimant - "In such circumstances (not your duty to uplift the fixed deposit - normal duty of Fixed Deposit Officer) it would appear that you were in collusion with Mr. A.L. Singaram in the fraudulent transaction". More serious than grossly negligent and what was alleged originally in the statement of defence.

The findings of the Industrial Court on these is in "MN-3" at pages 2 and 3 were:

(i) the applicant had been summarily dismissed by the employer.

(ii) the reason for the dismissal was that he was negligent in the performance of his duty as the Assistant Manager.

(iii) The bank had not acted reasonably having regard to the reason or principal reason aforesaid and in all the circumstances of the case on the following grounds:

(a) The claimant had not been negligent or grossly negligent as alleged. The Bank has not been able to establish, on balance of probabilities, that the claimant had been negligent or grossly negligent in this case.

(b) Even if the claimant had been negligent, it was not gross and it was not one which would justify or warrant his dismissal in this case.

The applicant was awarded compensation instead of reinstatement.

The applicant's Counsel contended that since the Industrial Court's finding in (a) was that the applicant's conduct was blameless, the Industrial Court's finding in (b) cannot stand in view of its finding in (a).

But learned Counsel for the respondent contended that at page 4 of the award the Industrial Court had held, in view of paragraph 3(b) the applicant is 40% liable for contributory conduct.

The applicant's Counsel says if the burden of proof was not discharged by the respondent (that he was negligent) it would surely be a perverse finding and a jurisdictional error committed by the Industrial Court that there can be a finding of contributory conduct by the applicant. The applicant therefore applied that this part of the award be severed. He cited the case of *V. Subramaniam & Ors. v. Craigielea Estate* [1982] 1 MLJ 317 where the Federal Court, in a case where the Industrial Court was in error, found that a probationer, who at the end of his

probationary period, has not been confirmed or told to go must be regarded as having been admitted into permanent service. It held that the award was severable and the High Court could quash that part which was a mistake without touching the rest.

Applicant's Counsel also cited *Malayan Banking Bhd. v. Association of Bank Officers, Peninsular Malaysia & Anor.* [1988] 3 MLJ 204 where the Supreme Court on the facts of the case, allowed *certiorari* to issue as the decision of the Industrial Court was clearly perverse in the sense that no reasonable body of persons could have reached it.

The applicant then prayed for order in terms.

Counsel for the respondent in reply submitted that the award must be read as a whole and not in bits and pieces. He submitted that the proper way of reading the award as a whole was that the Industrial Court held that the termination and dismissal of the applicant was because he was partially negligent but that negligence did not warrant a severe punishment of dismissal. That was why the Industrial Court said that the dismissal was without just cause or excuse.

Counsel submitted further that what the Court could not ignore is that, reading the award as a whole, there is a finding by the learned Chairman that the claimant had contributed to his dismissal and in the exercise of his discretionary powers the Industrial Court reduced the compensation in lieu of reinstatement by 40%. The Industrial Court is empowered to do this in s. 30(6) of the Industrial Relations Act 1967, he submitted.

The respondent's Counsel cited a number of cases which it is not necessary for me to refer to, for the Counsel for the applicant has conceded that the Industrial Court has discretion as to the quantum of any award but the discretion is exercised based on the evidence.

Counsel then submitted that the error, if at all, committed by the Industrial Court is not an error that went to jurisdiction and therefore the Court could not interfere with the decision. He said although the Industrial Court had made a finding that the dismissal, on the facts found, was without just cause or excuse but the evidence that the claimant had been negligent was there though not gross that warranted his dismissal.

However, when the Court pressed for an answer, from Counsel for the respondent, to state what were the facts as found by the Industrial Court Chairman that justified him making his finding in 3(b) of the award "even if the claimant had been negligent" learned Counsel's answer was "cannot be determined from the award what were the facts used by the Court to stand on the alleged finding in 3(b)."

After listening to arguments by both sides, I am satisfied that the primary finding of the learned Industrial Court Chairman was, that the dismissal of the applicant was without just cause or excuse. I am also satisfied that it is within the Court's discretion to award whatever quantum but if it is to be reduced then it must be based on facts found. I uphold the applicant's Counsel's contention that the Court's finding in (b) is unjustified after his finding in (a) "that the claimant had not been negligent or grossly negligent as alleged". I hold that after that finding in (a) the learned Chairman's finding in (b) was with due respect an error and the subsequent reduction of the award by 40% was equally an error as it could not be supported by any facts and cannot be supported by the finding in (b) "even if the claimant had been negligent" without more. This being my decision, I gave an order in terms prayed with costs.

The respondent appeals.